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*Published in:*  
Journal of International Political Theory

*DOI:*  
[10.1177/1755088218785922](https://doi.org/10.1177/1755088218785922)

*Publication date:*  
2018

*Citation for published version (APA):*  
Ruzicka, J. (2018). The Next Great Hope: The Humanitarian Approach to Nuclear Weapons. *Journal of International Political Theory*. <https://doi.org/10.1177/1755088218785922>

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## **The next great hope: The humanitarian approach to nuclear weapons**

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### **Abstract**

This article examines the humanitarian approach to nuclear weapons, which has reinvigorated the efforts to achieve their prohibition. It explores the fundamental arguments made by the “Humanitarian Initiative” and their grounding in a relationship between international law and international politics. The analysis draws on the emphasis that classical realists put on the political nature of international problems, primarily shaped by considerations of power. Such approach is useful because the humanitarian approach attempts to address the political problem of nuclear weapons by recourse to claims about morality and through the means of international law, most notably the Treaty on the Prohibition of Nuclear Weapons (TPNW), deliberately choosing to circumvent politics and its concern with power. The classical realist perspective suggests that to overlook the power political dimension and to consider the problem of nuclear weapons chiefly as a moral and legal issue is likely to lead to yet another failure in efforts to achieve nuclear disarmament.

### **Key words**

nuclear weapons, nuclear abolition, humanitarian approach, Treaty on the Prohibition of Nuclear Weapons (TPNW), classical realism, international law

One of the key defining features of the nuclear condition is the persistent inability to actually do away with nuclear weapons. Indeed, the nuclear condition itself must be defined with reference to their existence. There is a wider view that sees the nuclear condition as a product of the knowledge about nuclear weapons, knowledge that can never be lost. In this broader sense, the nuclear condition is permanent because these weapons cannot be disinvented, though their impact on humanity and politics can be reimaged (van Munster and Sylvest, 2016). Irrespective of whether one subscribes to this broader position or not, so long as nuclear weapons remain in someone’s possession, the nuclear condition cannot be argued away. It continues to be humanity’s condition. The lack of any meaningful progress on the way to nuclear disarmament and abolition is remarkable, because there has been no shortage

of attempts to achieve it.<sup>1</sup> What is more, it is a frequently proclaimed goal and a widely shared ambition among various political leaders. And yet, efforts to rid the world of nuclear weapons have failed time and again.

The failure to address the nuclear condition in a way that would provide a more satisfactory solution than the reliance on a fragile and potentially catastrophic balance of terror inherent to nuclear deterrence has not gone unnoticed by those disturbed by the existence of nuclear weapons. In recent years, a substantial group of actors, comprising of states and their representatives as well as many in the global civil society, have reinvigorated their efforts around what has come to be known as the humanitarian approach.<sup>2</sup> It draws on the idea that nuclear weapons with their awesome destructive power are a common problem shared by all human beings. Central to this view is the claim that the consequences of nuclear weapons' use, even in a limited form, would be far-reaching. Nuclear explosions would represent a humanitarian catastrophe in the sense that the ensuing impact would be largely indiscriminate, long-lasting, and affecting areas well beyond the immediate place of detonation.

The humanitarian approach is the next great hope of those committed to the abolition of nuclear weapons. It has injected some much-needed enthusiasm into the ranks of nuclear abolitionists (Acheson, 2018). In the past few years their activity has concentrated around the "Humanitarian Initiative". The Initiative is a series of formal international gatherings sponsored by several states where calls for the legal abolition of nuclear weapons have been raised. They initially led to the formulation of the "Humanitarian Pledge" and have culminated, thus far, in the adoption of the Treaty on the Prohibition of Nuclear Weapons (TPNW) in July 2017. The treaty was a result of speedy negotiations (formally these started only in March 2017) because the Pledge paved the way to identify and unite the likeminded actors. By accepting, the Pledge countries commit themselves to working towards the elimination of nuclear weapons on the grounds of their unacceptable humanitarian consequences. In addition to the formal meetings of the Initiative, the adoption of the Pledge, and the TPNW, states supporting the humanitarian approach have also succeeded in establishing the Open-Ended Working Group on nuclear disarmament set up by the United Nations General Assembly. The overarching aspiration of the humanitarian approach has been well captured by Nick Ritchie and Kjølsv Egeland as an effort to 'resist nuclear hegemony through delegitimising nuclear weapons' (2018: 8).

This article analyzes the humanitarian approach and the prospects it offers when dealing with the problem of nuclear weapons and by extension the nuclear condition. The analysis is grounded in a classical realist perspective. It draws particularly on the emphasis of classical realists on the political nature of international problems and the way in which these are shaped by considerations of power. Such perspective is especially useful because the humanitarian approach attempts to address the political problem of nuclear weapons by recourse to claims about morality and through the means of international law, thus deliberately choosing to circumvent politics and its concern with power. While this course of action is perhaps understandable, it is open to question whether, and if so, how, it takes into account the underlying power political realities created by the material possession of nuclear weapons. The tension between the nuclear weapon states and the non-nuclear weapon states when it comes to the abolition of nuclear weapons is a prime example of a conflict between the 'haves' and the 'have-nots'. The realization that none of the nuclear weapon states has accepted the humanitarian approach and have been fairly united in their rejection of it will probably come as no surprise at all. The classical realist perspective suggests that to overlook the power political dimension and to consider the problem of nuclear weapons chiefly as a moral and legal issue is likely to lead to yet another failure in efforts to achieve nuclear disarmament.

The article puts forward and addresses the following three questions. First, it asks what is new about the humanitarian approach that might allow us to distinguish it from previous attempts to abolish nuclear weapons? If there is no feature in the humanitarian approach that might be identified as novel, its contribution will be limited and the chances of its success are low. Second, the article asks, why has the humanitarian approach appeared in the current historical and political constellation? Understanding the conditions of its rise is crucial to identifying the practical political needs that it serves and to considering its further prospects. Finally, the article concludes by asking whether the humanitarian approach can reach its proclaimed goals. Judgment as to the appropriateness and adequacy of the means is a crucial element in evaluating this initiative.

### **The Humanitarian Initiative – What's new?**

The Humanitarian Initiative is a serious attempt to shift the debate on nuclear weapons. Aiming at their eventual abolition, the Initiative has coalesced around a series of conferences

on the humanitarian impact of nuclear weapons organized since 2013. Each of the conferences, hosted respectively by the governments of Norway, Mexico and Austria, saw an increase in the number of participants from other states as well as from non-governmental organizations. At these meetings a broad range of concerns about nuclear weapons and their potential use was articulated. The arguments about the catastrophic consequences of the use of nuclear weapons for humans and their natural environment have subsequently led to the formulation of the Humanitarian Pledge.

The Pledge was initially presented by the government of Austria at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons, which it organized in the beginning of December 2014. Although it was issued as the host-country's individual declaration, an additional 126 countries have since joined it.<sup>3</sup> The document served partly as a proclamation ahead of the regular 2015 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and partly as a manifesto for future action in the area of nuclear disarmament. In line with this two-pronged strategy, its supporters welcomed the vote of the United Nations General Assembly, which adopted the Pledge in the form of a resolution at its session in December 2015. Thus within one year, the Pledge has gone from an initiative launched by a single country to a large international undertaking that commands a comfortable majority in the UN General Assembly. In fact, the vote in the General Assembly was supported by many more countries than had endorsed the Pledge at the time of the voting.

The central objective of the Humanitarian Initiative was to achieve a legal document banning and eliminating nuclear weapons (Sauer and Pretorius, 2014). Its goals are most succinctly summarized in the concluding paragraph of the Pledge, which declares the aim to 'stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks' (Humanitarian Pledge, 2014).<sup>4</sup>

While the language of the Pledge draws on several formulations stressing the humanitarian effects of any potential use of nuclear weapons that were contained in the consensus document of the 2010 NPT Review Conference, efforts to control nuclear weapons by pointing out dangers they represent to humanity predate their very existence. The physicist Niels Bohr warned in his July 1944 memorandum to President Franklin D. Roosevelt that in the absence of an international agreement to control the new fissile materials any immediate

advantage would be ‘outweighed by a perpetual menace to human security’ (Bohr, 1944). A decade after the detonation of two nuclear bombs over Japan the humanitarian concerns stemming from the use of nuclear weapons were reiterated in the 1955 Russell-Einstein Manifesto which gave rise to the Pugwash movement (eventually, in 1995, the Pugwash was awarded the Nobel Peace Prize for its efforts to diminish and eliminate the role of nuclear weapons in international politics). The Russell-Einstein Manifesto saw the use of nuclear weapons in any new world war as inevitable and consequently called for a peaceful settlement of disputes. Importantly, its authors appealed to the notion of common, biological needs of the human species. As they famously put it, calling on the decision-makers of their time, ‘remember your humanity, and forget the rest’ (Russell and Einstein, 1955).

The Humanitarian Initiative has two other prominent sources of inspiration. First, it builds on the 1996 advisory opinion of the International Court of Justice (1996). Although the Court found neither the use, the threat of use, nor the possession of nuclear weapons illegal it concluded that such actions needed to conform to international humanitarian law with which they were generally incompatible, though not under all circumstances. Significantly, the Court mentioned explicitly ‘an extreme situation of self-defence, in which the very survival of a State would be at stake’ (International Court of Justice, 1996: 44). Nevertheless, the advisory opinion gave the adherents of the humanitarian approach a powerful tool with which to demand change to the nuclear status quo.

Second, the proponents of the Humanitarian Initiative attempt to model their efforts after the success of the international campaigns to ban landmines and cluster munitions, which, in their view, produced ‘new standards of appropriate state behaviour’ formulated in international, legal documents (Borrie, 2014: 626). The achievement of those campaigns is ascribed particularly to the ways in which they reframed particular weapons and how they mobilized and managed to bring together states and civil society actors, which then pushed their joint agenda in various diplomatic settings. Key to their accomplishment, so the proponents argue, was following ‘a principle-based approach’ through the means of which ‘a complete weapon system was declared illegal’ (Sauer and Pretorius, 2014: 246). In short, the road to success led through a combination of moral and legal arguments, which superseded the traditional processes of arms control negotiations, typically restricted to states alone.

It remains a question whether landmines or cluster munitions, the two main precedents invoked by the proponents of the Humanitarian Initiative, belong to the same category as nuclear weapons. One could argue that, while landmines or cluster munitions kill a lot of people individually, what sets nuclear weapons apart is the scale and scope on which annihilation would occur in entire regions or even worldwide.<sup>5</sup> Moreover, in so far as efforts to reframe the perception of nuclear weapons are central to the humanitarian approach, one also needs to be aware that nuclear weapons are perceived in a very different manner. Nobody has ever called landmines or cluster munitions the decisive guarantors of national security or the ultimate insurance policy.<sup>6</sup> Yet, these are precisely the labels that are frequently invoked in various national strategic documents and in public debates about spending on nuclear weapons systems. This specific perception, which truly sets nuclear weapons apart and which is connected to the physical destructive properties constituting them, is what contributes to their distinctive status.

Given the historical precedents, what is then new about the humanitarian approach? As already noted, there has been no shortage of moral arguments against nuclear weapons based on the awareness of their extremely destructive power. To point out the consequences of nuclear weapons' use and draw moral conclusions is not original. Albert Wohlstetter remarked as much in his critique of another attempt that stressed the moral impermissibility of nuclear weapons' use, namely the 1983 pastoral letter of US Catholic bishops (Wohlstetter, 2009: 563).

What is, however, novel about the current humanitarian approach is the emphasis on the combination of moral *and* legal arguments contained in the Humanitarian Initiative and the TPNW. It presents a moral stance, a rejection of nuclear weapons grounded in the belief in the unacceptable, universal consequences of their use, and tries to transform it into an absolute principle of international law enshrined in the treaty. In short, the Humanitarian Initiative presupposes that a sufficient number of people and states can be convinced about the dictates of the humanitarian consequences. Once they accept the moral argument, buttressed by the authority of scientific findings about the potential effects of nuclear weapons, a legal ban must follow.

The humanitarian approach uses legal arguments in three ways. First, the proponents are aware that a legal ban on nuclear weapons will not necessarily lead to nuclear disarmament

(Fihn 2017). Some states might obviously choose to stay out of such a treaty, just like there still are states that refuse to accede to the Non-Proliferation Treaty or the Comprehensive Test Ban Treaty. But a legal ban provides, so the argument goes, a crucial element in the process of delegitimizing and devaluing nuclear weapons (Sauer and Pretorius, 2014: 248; Ritchie 2014). By forging the TPNW a new international standard, a norm, has been adopted, and it is now be possible to work towards making this norm universal. The weapons' illegality will allow for their stigmatization.

Second, the argument for a legal ban is an attempt to address the asymmetric power relationship between the nuclear 'haves' and the 'have-nots'. By trying to turn the fact of possession of nuclear weapons, which is a matter of a political decision and expediency, into a matter of legality/illegality, the 'have-nots' are moving towards the reversal of the well-established notion, formulated by E. H. Carr, that 'insistence on the legal validity of international treaties is a weapon used by the ruling nations to maintain their supremacy over weaker nations on whom the treaties have been imposed' (Carr, 1964: 189). The Non-Proliferation Treaty with its robust enforcement of the nonproliferation norm and the neglect of the disarmament provisions of Article VI, both of which favour the nuclear 'haves', is an excellent example confirming E. H. Carr's observation. The legal ban on nuclear weapons would, however, allow the weaker states to make claims that the possession of nuclear weapons is a matter of law. Doing so would, to quote E. H. Carr one more time, 'exclud[e] the factor of power' (Carr, 1964: 205). Unsurprisingly then, the nuclear weapon states have been hostile to the Humanitarian Initiative, the Treaty on the Prohibition of Nuclear Weapons and the humanitarian approach as a whole.

Finally, and related to the previous point, the legal arguments are used to address a political issue, that has been otherwise immune to challenges. Simply put, law is used as an instrument in creating a process of political resistance. In the mid-1990s, when the International Court of Justice was asked about the legality of the use, the threat of use, or the possession of nuclear weapons, some of the nuclear weapon states argued during the hearings that the Court did not face a legal question but a political one. While the Court agreed that there were political aspects to the case, this acknowledgement did not prevent it from weighing in on the question of legality and compatibility of nuclear weapons with international humanitarian law. In short, the nuclear weapon states must defend themselves, legally and politically, whereas in the absence of the humanitarian approach they would not have had to do so. The presence of



the United States' and United Kingdom's representatives at the Vienna Conference in 2014, to voice their countries' disagreement with the Initiative, was a good illustration. It would seem, however, that the liberal democratic nuclear weapon states (except for France, perhaps) are more susceptible to the kind of pressure emanating from norms grounded in international law than other nuclear possessors, thus potentially limiting the scope of this argument.

### **Why now?**

Writing on the subject of nuclear disarmament in the early 1980s, George Kennan expressed regret over what he perceived as the lost sense of urgency, which characterized the previous decades. As he put it:

One senses, even on the part of those who today most accurately perceive the problem and are inwardly most exercised about it, a certain discouragement, resignation, perhaps even despair, when it comes to the question of raising the subject again. The danger is so obvious. So much has already been said. What is to be gained by reiteration? What good would it now do? (1982: 175—76)

Kennan delivered these remarks as he was awarded the Albert Einstein Peace Prize. He concluded his speech by recalling the Russell-Einstein manifesto's appeal to remember one's humanity. His address illustrates well the persistent nature of humanitarian concerns about nuclear weapons. But the fact that such concerns were voiced in the past only makes more prominent the question about the rise of the humanitarian approach in the last few years. Why has it become so significant?

The sentiment expressed by Kennan is shared, perhaps even more strongly, among the anti-nuclear activists today. They frequently decry the public's lack of awareness of, and interest in, nuclear matters. If Kennan thought a sense of urgency was missing in the early 1980s, when there were robust, publicly very engaged and visible anti-nuclear protests, he would have been stunned by the present-day disinterest in nuclear issues. The possession of nuclear weapons and their place in countries' security policies are firmly entrenched and are not exposed to any serious protest or debate. A major decision by the British Parliament in July 2016, which has given the final go-ahead to the replacement of the United Kingdom's nuclear deterrent for decades to come, was reached after less than a day's worth of debate in the House of Commons. In a typical fashion, the Prime Minister Theresa May invoked the

unknown future threats and concluded that ‘it would be an act of gross irresponsibility to lose the ability to meet such threats by discarding the ultimate insurance against those risks in the future’ (May 2016). A vast majority of the MPs agreed with her. The proponents of the renewal did not fail to note that the final decision carried a far greater majority (of 355 votes) than the initial vote under the Blair government in December 2006 (a still very comfortable majority of 248 votes).

Against this background of contentment with the nuclear possession, which has become paradigmatic to all nuclear weapon states, the humanitarian approach is an attempt to capitalize on various pronouncements concerning nuclear disarmament that have appeared in the last decade. Starting with the January 2007 *Wall Street Journal* op-ed by the so-called gang of four (George Shultz, William Perry, Henry Kissinger, and Sam Nunn), who have called for a world free of nuclear weapons, this trope has been developed further in their subsequent writings and echoed by similar groups of former prominent politicians, diplomats, and military leaders globally. The vision of the world free of nuclear weapons also received endorsement from the US President Barack Obama in his Prague Speech in April 2009. The recognition of the humanitarian consequences in the final document of the 2010 NPT Review Conference provided an important formal point of reference, as have various following votes in the United Nations General Assembly that have focused more specifically on the Humanitarian Initiative. In short, there appeared a rhetorical opening on which the humanitarian approach has tried to capitalize (Ritchie 2018).

Despite this range of endorsements of nuclear disarmament, it would be relatively easy to dismiss the objectives of the humanitarian approach as unattainable or unrealistic. After all, calls for a world free of nuclear weapons are typically wrapped in various caveats and heavily conditioned. And there is already some evidence to reach the conclusion that the humanitarian approach might fade like all previous attempts. While the nuclear-armed states have been paying attention, it would be putting it mildly to say that their reactions have not been sympathetic. Indeed, in some cases they have been concerted and hostile, because the Humanitarian Initiative not only reminds them of their obligations to disarm (this obligation only concerns the five recognized nuclear weapon states that are signatories of the NPT, not the other nuclear armed states which remain outside of the nonproliferation treaty), but also because it questions their moral choices in the pursuit of their national security policies. Resistance to the humanitarian approach is not, however, the sole domain of the nuclear

weapon states. Their allies have, likewise, been unwilling to endorse the Humanitarian Pledge, despite the fact that some among them did support the Joint Statement of the Humanitarian Initiative delivered at the NPT Review Conference in April 2015. None of the NATO alliance states, for instance, has formally endorsed the Pledge, even though Norway sponsored the very first conference on the humanitarian consequences of nuclear weapons in 2013. In short, the prospects of success are bleak, no matter how much enthusiasm there may be among the Initiative's supporters.

Dismissing the goals of the Humanitarian Initiative as unattainable and unrealistic because of the resistance it has encountered would, however, miss the point. The Humanitarian Initiative is precisely a result of frustration stemming from the lack of progress on nuclear disarmament within the framework of the existing institutions of the nonproliferation regime. While the Initiative's adherents are very careful to stress that their objective is not to undermine these institutions, there is a palpable sense that they must be given a new impulse.

Indeed, the Humanitarian Initiative has come to be increasingly seen by many as the only possible way of moving forward on nuclear weapons (Johnson, 2015). This is so, because the Conference on Disarmament continues to be deadlocked, the 2015 Review Conference of the NPT reached no consensus, and the nuclear weapon states keep upgrading their nuclear arsenals. Given its decades-long impasse, the Conference on Disarmament has rendered itself largely irrelevant, if not outright grotesque, due to the inability to even agree on its agenda, let alone make any substantive progress; the 2015 NPT Review Conference lived up to the historical pattern where "success" is followed by "failure". Moreover, the NPT has never brought any tangible progress on nuclear disarmament. Viewed from such a perspective, the Humanitarian Initiative, fresh off a series of conferences, high-profile motions at the United Nations, and capped by the adoption of the TPNW appears to have the momentum that manifestly does not exist elsewhere. In fact, the momentum and the buzz that the Humanitarian Initiative created were, until the July 2017 conclusion of the TPNW, frequently presented as its chief accomplishments (Fihn 2015). It is obviously possible to argue over whether this process is much of an achievement. The proponents believe that it is too early to tell, and there is a palpable sense of excitement at various venues when the Initiative and the TPNW are discussed.

The preoccupation with the momentum, however, represents one of the key and probably fairly immediate problems facing the Humanitarian Initiative and the TPNW. What exactly is going to happen as the momentum exhausts itself? The exhaustion is inevitable, because the campaign initially enjoyed the advantages of an extensive growth. At some point such a mode of growth was bound to meet its limits. While the number of 127 countries that have endorsed the Humanitarian Pledge is impressive, it also remains the fact that the count has not grown since 2016. Fewer countries (122) voted for the TPNW and it has (as of May 2018) merely 58 signatories of whom ten states have also ratified the treaty. As the momentum slows down, maintaining or regaining it risks becoming the chief objective instead of focusing on the actual subject matter of nuclear disarmament. Despite the accomplishment of negotiating a nuclear weapons ban treaty, it might be worthwhile to consider the parallel with the Comprehensive Test Ban Treaty (CTBT), the ratification of which has practically stalled in the last two decades. China or the United States have yet to ratify that treaty, while other nuclear-armed states such as India, North Korea and Pakistan have not even signed up to it. And yet, the analogy between the CTBT and the Humanitarian Initiative is not entirely accurate because the CTBT did establish a norm against nuclear weapons' testing, while it remains the subject of contention whether the TPNW has done something similar concerning the possession of nuclear weapons (Highsmith and Stewart 2018).

The larger argument here is that if the recent growth of the Humanitarian Initiative, including the effort to adopt and establish a ban treaty, is a response to the frustration produced by the lack of movement towards nuclear disarmament within the current structures, it serves precisely as a palliative, but not as a remedy. In turn, if the Initiative is a mere palliative, the nuclear weapon states will be content to let it run its course, or even prolong the period during which the placebo will be in effect.<sup>7</sup> That the latter could become the case is suggested not only by the presence of some of the nuclear weapon states at the Humanitarian Initiative meeting in Vienna in December 2014, but also by the reluctance of their allies to pursue the Initiative fully. For instance, the Australian Foreign Minister Julia Bishop warned before the February 2014 conference in Mexico that 'we must engage, not enrage nuclear countries' (Bishop 2014). This attitude has not disappeared and has, perhaps, become more firmly entrenched.

Seen in this light, the Humanitarian Initiative might be doing more for the maintenance of the status quo than its adherents would probably wish to admit. It creates additional space for arguments about the best possible tactics on how quickly to move ahead, what to do and what not to do so that some states are not offended or enraged, what preparatory work needs to be done, which conditions have to be addressed before substantive progress may be achieved, and so on (Patton 2018). There will be plenty of experts to weigh in on these issues, always ready to address various political expediencies and argue why it is important and even ethical to wait and proceed cautiously.<sup>8</sup> In short, the Humanitarian Initiative and the TPNW may become yet more attributes of the nonproliferation complex.

### **Can the humanitarian approach work?**

While the Humanitarian Initiative has raised a good deal of enthusiasm, some of its proponents surprisingly admit that achieving the ultimate goal of nuclear disarmament is unlikely. They have spent enough time dealing with the nuclear weapon states to have developed proclivity for satisfying themselves with minor improvements and initiatives. Being engaged in a process tends to be more important than tangible results (Craig and Ruzicka 2013). To this end, the humanitarian approach meets the necessary requirements. It has created, new venues to rehash the arguments, and new sources of funding. The humanitarian approach fits well, paradoxically if one wishes, with the mode of operation of the nonproliferation complex.

But there are at least two other, and more significant, reasons that cast doubts over the prospects of the Humanitarian Initiative and the TPNW. Both of them can be traced to the combination of moral and legal claims that the Initiative puts forward and to their universalist nature. It is here that the insights of classical realism - especially its emphasis on power, scepticism about universalising claims, and concerns about the relationship between law, morals and politics - provide a useful analytical perspective.

First, the Humanitarian Initiative disregards states' relative power considerations and makes unwarranted universalist assumptions. The humanitarian consequences of the use of nuclear weapons are presented as part of the effort to undermine the narrative behind nuclear deterrence.<sup>9</sup> Emphasizing the humanitarian costs of potential nuclear explosions, deliberate or accidental, serves the dual goals of devaluation and stigmatization of nuclear weapons. The underlying premise of efforts to devalue and stigmatize is that nuclear weapons have no value

of their own, but merely that which is socially ascribed to them. Even if one accepts the philosophical grounds of this position, which are not incontestable, in terms of practical politics it omits actors' differentiated power concerns stemming from their relative roles and situations. These vary partly according to their specific position within the international system (great powers vs. small states, countries in stable vs. unstable regions, etc.) and partly as a result of their particular internal political preferences and choices (status quo states vs. revisionist states, peaceful vs. aggressive states, etc.). In its universalist zeal, the Humanitarian Initiative overlooks the possibility that in a world of pluralistic political actors the value of nuclear weapons is relative and likely to differ based on their power and/or identity concerns.<sup>10</sup> In other words, the humanitarian effects of nuclear weapons may be identical to all, but no single political response follows from this because the humanitarian consequences are only one among many considerations states weigh upon in their process of valuation of nuclear weapons.

The relative assessment of value is not, however, the only area in which the proponents of the Humanitarian Initiative make a mistake on the basis of their universalist assumptions. The same logic of differentiation applies also to actors' relative willingness to suffer stigmatization for going against a dominant norm. In the sphere of nuclear politics the cases of the four holdouts from the Nonproliferation Treaty (India, Israel, North Korea, Pakistan) amply demonstrate the point. All have been exposed to some degree of stigmatization, which they knew would follow their actions, even though they have not been put under equal amounts of pressure. The difference will be readily apparent to anyone who considers the treatment received by India and North Korea, respectively. While the former has benefitted from inclusion into various international bodies that typically require being a signatory of the NPT, the latter has been exposed to decades of international sanctions. Here is not the place to judge the relative merits of the varied levels of stigmatization. The difference nevertheless drives home two conclusions. First, some states may knowingly choose to suffer stigmatization, if they deem it the necessary price to pay for the achievement of other objectives, for example status or security that may come with the possession of nuclear weapons. Second, the levels of stigmatization itself differ based on the separate considerations of those who should carry out stigmatization. In short, stigmatization is not only a matter of a moral principle, but of a political decision to enforce a moral principle. As such, it may therefore not materialize because of other political considerations.

To sum up, elimination of nuclear weapons espoused by the Humanitarian Initiative and the TPNW is logically based on two universalist assumptions – 1) the relative value of these weapons will come to equal zero among all states; 2) states will wish equally not to be stigmatized.<sup>11</sup> Both of these assumptions are doubtful so long as the international system of sovereign states exists. As we have seen, the different power political considerations and the pressures stemming from a state's position in the international system undermine the two assumptions. This is further compounded by the fact that all states will not be treated/stigmatized equally by other states, because these states will apply moral principles to the extent that it serves, or is compatible with, their politically defined interests and identities.

The second reason that casts a major doubt over the prospects of the Humanitarian Initiative stems from its excessive legalism, i.e. the belief that the problem of nuclear weapons can be resolved by translating moral principles into legal arguments and instruments, which is manifested in the drive towards the TPNW. The problem of nuclear weapons is, however, inescapably the problem of their political control. As the classical realists never tired pointing out, 'none of the schemes and devices by which great humanitarians and shrewd politicians endeavoured to reorganize the relations between states on the basis of law has stood the trial of history' (Morgenthau, 1962: 282). Central to their critique was the rejection of the notion that, in the words of Hans J. Morgenthau, 'the law, as it really is, can be understood without the normative and social context in which it actually stands' (Morgenthau, 1962: 282). This normative and social context is shaped by politics, a relationship which E. H. Carr captured particularly pithily: 'the ultimate authority of law derives from politics' (Carr, 1964: 180).

The advocates of the Humanitarian Initiative may be celebrating discursive shifts in their frequent meetings around the world, but the decisive normative and social contexts are to be found in domestic politics, where nuclear decisions are taken, and in the framework of international politics, which shapes these decisions. The Initiative's proponents mistake what they take to be a universal moral claim – nuclear weapons must not be used because of their inhumane consequences – for a universal political principle that must guide everyone's action. The aforementioned vote in the British Parliament is a fitting example that such a link between a moral claim and political action cannot be assumed to exist. A decision in favour of nuclear weapons was reached domestically with reference to future uncertainty inherent to the international system. An international ban is not going to change such domestic calculations and leanings. Those states that deem the value of nuclear weapons to be greater

than zero, states which see in these weapons their “ultimate insurance policy” and are willing to suffer stigmatization because of the possession, will simply abstain from any such agreement, much like they have done with the Nonproliferation Treaty, the Comprehensive Test Ban Treaty, the Mine Ban Treaty, or the Convention on Cluster Munitions. The NPT is by far the most universally subscribed to of all of these treaties, yet four nuclear-armed states remain outside of it. To recall Morgenthau once more, ‘a rule of international law does not (...) receive its validity from its enactment into a legal instrument, such as an international treaty’ (Morgenthau, 1962: 298). Law needs to be maintained by compatible interests or a balance of power, either of which would ensure that rules will be enforced.

There is a strong inclination among the advocates of the Humanitarian Initiative to believe that its success is a matter of a better argument and a proper understanding of the issue. One of the leaders of the cause, Austrian diplomat Alexander Kmentt, expressed the belief in the following way: ‘The more the world understands about the global humanitarian consequences of nuclear weapons, the stronger the case against them becomes. Viewed against such a background, nuclear weapons are not reconcilable with a 21<sup>st</sup>-century understanding of international law and, in particular, international humanitarian law’ (Kmentt, 2013). There could hardly be a better expression of legalism, which Judith Shklar identified as a ‘belief that law is not only separate from political life but that it is a mode of social action superior to mere politics’ (Shklar, 1986: 8).

A political theorist, Shklar was not per se interested in international relations.<sup>12</sup> But she fully recognized that the most damning indictment of legalism predating her own devastating critique of it came from the classical realists in the study of international politics. Her contribution is important because it demonstrates how, despite giving the semblance of action, legalism leads to political inertia as a result of its rejection of politics: ‘To subdue this irrational political world it becomes all the more necessary to insist on a policy of uncompromising rules and rule following’ (Shklar, 1986: 122). This is precisely the direction that the humanitarian approach has taken with its turn to the Humanitarian Pledge and the Treaty on the Prohibition of Nuclear Weapons. It insists ever more strongly on rules that will somehow rid the world of nuclear weapons, while ignoring the political, social, and normative contexts which prompt countries to opt for the possession of nuclear weapons. It may be true, as the proponents of the ban proclaim, that nuclear weapons are the only type of weapons of mass destruction not yet legally prohibited. But, and this is a crucial point, it does



not follow that the existence of a legal ban would lead all actors to act politically in an identical manner.

## **Conclusion**

The humanitarian approach clearly contains emancipatory ambitions and its combination of moral and legal arguments, though not without historical precedents, is innovative. But its proponents would do well to heed the scepticism and wisdom of classical realism when it comes to encounters between morality, international law and international politics. From a classical realist perspective, the danger here is obvious. Instead of doing something about nuclear disarmament, diplomats, international lawyers, and the global civil society will spend the foreseeable future discussing whether nuclear weapons are or are not compatible with international humanitarian law and debating fine intricacies of the ban treaty along with its legal relationship to other cornerstones of the global nuclear order. In the meantime, nuclear weapon states will carry on with the ongoing upgrades of their nuclear arsenals. In the eyes of some observers, engaging in a lengthy, seemingly endless process (remember that the UN working group on nuclear disarmament is called ‘open-ended’) might be a good enough result. It will keep the question of nuclear disarmament alive, while reinjecting it with some enthusiasm, hope and purpose, with visions of what could be. And yet the process itself is unlikely to achieve the proclaimed goal of nuclear abolition. This is so, because the legalistic argument, which follows from the claims about the moral unacceptability of nuclear weapons, reinforces the current structure of international politics. It is sovereign states that are signatories of the TPNW and that have to ratify it. It is states that it aims at first and foremost. As Shklar persuasively argued, not only is law inherently conservative, even when used for supposedly progressive purposes, but also legalism, as a political ideology, constitutes a ‘defense of the status quo’ (Shklar, 1986: 135). The humanitarian approach clearly wishes to change the nuclear status quo, but in doing so it ignores the political conditions and realities that have produced current nuclear order in the first place. It is precisely the international structure comprising sovereign states that has led humanity toward the nuclear condition. The attempt to draw states into a process centred around the legal prohibition of nuclear weapons is fraught with the danger of the process being dominated by states’ interests that will override the humanitarian imperatives. Already, there are tensions and warnings not to proceed too far, too quickly, because some states might get upset and abandon the initiative as too radical. But, any effort that would address the nuclear condition has to be radical, given the revolutionary nature of nuclear weapons.

## Acknowledgments

I would like to thank Hartmut Behr, Richard Beardsworth, and Timothy W. Luke for the invitation to write this article for their project Classical Realism Meets Critical Theory. I benefitted greatly from participation in the workshops at Virginia Tech (June 2015) and Aberystwyth University (January 2016). I should like to thank the convenors and the participants for their helpful comments. I am grateful to Nick Wheeler for the opportunity to present an earlier version of this paper at the Institute for Conflict, Cooperation and Security (University of Birmingham) in May 2016. Ken Booth and Kamila Stullerova read carefully several drafts and commented generously. I owe a great deal of gratitude to both of them.

## Notes

1. Since the late 1980s, there has been a decline in the number of nuclear warheads held and deployed by the nuclear weapon states. While in absolute terms the overall number has decreased significantly, it is meaningless in terms of their destructive power and consequences their use would have for humankind and the planet.
2. These actors have come together chiefly under the umbrella of the International Campaign to Abolish Nuclear Weapons (ICAN), which was the recipient of the 2017 Nobel Peace Prize for its efforts to ban nuclear weapons.
3. For an up-to-date list of the countries endorsing the Pledge see the website maintained by the International Campaign to Abolish Nuclear Weapons - <http://www.icanw.org/pledge/> (accessed 25 May 2018).
4. The 2010 NPT Review Conference Final Document stated the member parties' 'deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons.' See 2010 Review Conference Final Document, Volume I, p. 12, available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=NPT/CONF.2010/50%20\(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20(VOL.I)) (accessed 25 May 2018).
5. This argument has, of course, long been central to the case made by the proponents of nuclear deterrence. The awareness of high costs of the use of nuclear weapons, perhaps even in the ultimate form of the destruction of the planet, is what leads the proponents to believe that their possessors will be particularly hesitant to use them. In other words, the adherents of nuclear deterrence would not dispute the effects of the use of nuclear weapons. Such knowledge is indispensable to the belief in nuclear deterrence. However, they draw fundamentally different conclusions from the knowledge of the weapons' destructive power.
6. I would like to thank Ken Booth for raising this point.
7. As Campbell Craig and I have argued, there will also continue to be a powerful institutional interest within the nonproliferation complex to keep the Humanitarian Initiative going, because it further justifies the existence of its constituent parts. See Craig and Ruzicka (2013).
8. For examples of precisely such pieces that give some credit to the Humanitarian Initiative in principle, but question whether now is the right time to proceed on its goals or cast doubt over the TPNW see Heather Williams (2016) and Scott Sagan and Benjamin A. Valentino (2017).
9. I leave aside the belief of its proponents that nuclear deterrence works because of the unacceptable costs it would impose on those suffering from nuclear explosions.

Whether or not this belief is warranted, is an important question. But the argument I present works irrespective of how this particular question is answered.

10. The relative value of nuclear weapons is the reason why among states capable of building them some do and some don't.
11. There is obviously the possibility that some actors could place a greater than zero value on nuclear weapons but they would still be coerced into being non-nuclear weapon states.
12. Kamila Stullerova (2016) clearly demonstrates the connection between Shklar and the classical realists.

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